

AMENDED IN ASSEMBLY JUNE 30, 2004
AMENDED IN ASSEMBLY JUNE 21, 2004
AMENDED IN ASSEMBLY JUNE 16, 2004
AMENDED IN SENATE MAY 11, 2004
AMENDED IN SENATE MAY 3, 2004
AMENDED IN SENATE APRIL 12, 2004
AMENDED IN SENATE APRIL 12, 2004

SENATE BILL

No. 1386

Introduced by Senator Vasconcellos
(Coauthor: Assembly Member Goldberg)

February 18, 2004

An act to add Article 9 (commencing with Section 49052) to Chapter 6 of Part 27 of the Education Code, relating to pupils.

LEGISLATIVE COUNSEL'S DIGEST

SB 1386, as amended, Vasconcellos. Pupils: drug and alcohol testing.

Existing law authorizes a superintendent or principal of a school to suspend or expel a pupil that commits one or more of enumerated acts including, among others, certain specified acts regarding the use, possession, or offering of intoxicants.

This bill would provide for the drug or alcohol testing of a pupil only upon a reasonable suspicion, as defined, that the pupil is unlawfully using or has unlawfully used a controlled substance, as specified, or alcohol. The bill would require a school district, if it adopts a drug and

alcohol testing policy, to provide adequate notice of the policy to the parent or guardian. The bill would also restrict access to test results to ~~certain~~ specified individuals. The bill would provide that a school district should seek to ensure that a pupil that tests positive for the unlawful use of drugs or alcohol is referred to a school counselor, a substance abuse professional, or other appropriate school staff, to develop a course of treatment to address the unlawful use of drugs or alcohol.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Article 9 (commencing with Section 49052) is added to Chapter 6 of Part 27 of the Education Code, to read:

Article 9. Drug and Alcohol Testing

49052. (a) The Legislature finds and declares all of the following:

(1) All pupils and staff in the public schools have an express and inalienable right to attend campuses that are safe, secure, and peaceful, under subdivision (c) of Section 28 of Article I of the California Constitution.

(2) Pupils who abuse drugs or alcohol may increase risks to the health and safety of all pupils and negatively impact the learning environment of their schools.

(3) All individuals have an express and inalienable right to privacy under Section 1 of Article I of the California Constitution.

(4) Random, suspicionless drug and alcohol testing impairs the trust and cooperation between parents, pupils, and school staff that is instrumental to a productive learning environment, thereby distracting pupils, educators, and administrators, from the core educational mission of the public schools.

(5) Dr. Ryoko Yamaguchi, Dr. Lloyd D. Johnston, and Dr. Patrick M. O'Malley, in an article appearing in the April 2003, edition of the Journal of School Health, conclude that random drug testing is not an effective deterrent to drug use by pupils.

(6) Random drug and alcohol testing programs are costly, absorbing scarce funds that would be better used on core curricula,

1 school security, and drug and alcohol use prevention, education,
2 and treatment.

3 (7) In the August 1996 issue of Pediatrics, the American
4 Academy of Pediatrics Committee on Substance Abuse concluded
5 that pupil participation in mass random, suspicionless drug
6 screening programs should not be a prerequisite to participation in
7 school activities. The committee also reaffirmed its position that
8 the appropriate response to the suspicion of drug abuse in a young
9 person is the referral to a qualified health care professional for a
10 comprehensive evaluation.

11 (8) Pupils should not be required to disclose their prescription
12 medication regimen to school officials in the absence of a medical
13 emergency or an otherwise compelling medical need. Random,
14 suspicionless drug testing often requires a pupil to reveal private
15 medical information to nonmedical school personnel.

16 (b) (1) It is the intent of the Legislature to ban the costly and
17 ineffective practice of random, suspicionless drug and alcohol
18 testing, while preserving the authority of school officials to
19 suspend, expel, or otherwise discipline pupils who violate health
20 and safety rules by using, distributing, or selling drugs or alcohol.

21 (2) It is the intent of the Legislature to authorize local school
22 officials to use drug and alcohol testing based upon a reasonable
23 suspicion of the unlawful use of drugs or alcohol.

24 49053. (a) (1) No school district may require or request a
25 pupil to submit to testing of any sample of a pupil's urine, hair, or
26 other bodily tissue or bodily fluid to determine drug or alcohol use,
27 except as provided by this article. A school district may adopt a
28 drug and alcohol testing policy consistent with this article. Drug
29 and alcohol testing is permitted only upon a reasonable suspicion
30 of the unlawful use of a controlled substance enumerated by
31 Chapter 2 (commencing with Section 11053) of Division 10 of the
32 Health and Safety Code, or alcohol.

33 (2) A school district that adopts a drug and alcohol testing
34 policy shall provide adequate notice of the policy to the parent or
35 guardian of a pupil enrolled in the school district.

36 (b) For purposes of this article, "reasonable suspicion" means
37 articulable facts, together with rational inferences from those
38 facts, warranting an objective suspicion that a pupil is unlawfully
39 using or has unlawfully used a controlled substance enumerated by

1 Chapter 2 (commencing with Section 11053) of Division 10 of the
2 Health and Safety Code, or alcohol;.

3 (c) Reasonable suspicion may not be ~~predicated upon mere~~
4 ~~curiosity, rumor, or hunch, or~~ based upon any of the following
5 factors:

6 (1) Race.

7 (2) National origin.

8 (3) Gender.

9 (4) Socioeconomic status.

10 (5) Sexual orientation.

11 (6) Suspicion or evidence of drug use among the pupil's family
12 members or peer group.

13 (7) Disability or medical condition.

14 (8) Religion.

15 (d) Test results shall be treated as confidential medical records
16 and shall be accessible only to the following individuals:

17 (1) The pupil subject to testing.

18 (2) The parent or guardian of the pupil.

19 (3) The principal or his or her designee who is directly
20 responsible for school discipline and safety.

21 (4) ~~Certified~~ *Appropriate school staff and certified* or licensed
22 health care professionals employed by or working with a school
23 district, including physicians, registered nurses, advanced nurse
24 practitioners, ~~and counselors~~ *counselors, and substance abuse*
25 *professionals*, for whom the information is necessary to facilitate
26 an individualized course of action for the pupil that addresses the
27 unlawful use of drugs or alcohol and supports scholastic success.

28 (5) A county superintendent of schools and district
29 superintendent of schools.

30 (6) *Appropriate law enforcement authorities pursuant to*
31 *Section 48902, individuals identified pursuant to Section 49075 or*
32 *described in paragraph (1) of subdivision (b) of Section 49076, or*
33 *other individuals pursuant to Section 49077.*

34 (e) A school district should seek to ensure that any pupil who
35 tests positive for the unlawful use of drugs or alcohol is referred
36 to a school counselor, a substance abuse professional, or other
37 appropriate school staff. The purpose of such a referral should be
38 the development of an individualized course of treatment that
39 addresses the unlawful use of drugs or alcohol and supports
40 scholastic success.

1 (f) Nothing in this article shall be construed to limit the ability
2 of a school or school district to discipline a pupil under Article 1
3 (commencing with Section 48900).

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5 CORRECTIONS

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7 **Text — Page 4.**

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